

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
UD1924/2009

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr N. Russell

Members: Mr J. Hennessy
Mr F. Dorgan

heard this appeal at Clonmel on 9th November 2010

Representation:

Appellant : In person

Respondent : Mr. John Farrell, IBEC, Waterford Business Park, Cork Road, Waterford

This case came before the Tribunal by way of an appeal against a recommendation by a Rights Commissioner reference number r-073722-ud-09/POB

The determination of the Tribunal was as follows:

Preliminary Issue

The Tribunal having considered the finding of the Rights Commission, all evidence adduced and documents submitted has decided unanimously to upset the Recommendation of the Rights Commissioner, to allow the appeal and proceed to deal with the substantive issue.

It is uncontested that the Date of Dismissal was the 2nd of July 2008 and that the Application to the Rights Commissioners was date stamped on the 5th of July 2009 by the Commissioners' Office.

While the Claimant has not proffered any documentary evidence of the submission by post of his application to the Rights Commission within the relevant period the Tribunal must have due cognisance of the circumstances that prevailed within both the postal services and Government Bodies during the Christmas holiday period.

The Tribunal finds no evidence that the Rights Commissioner considered applying the 'exceptional circumstances', test as provided for in Section 7 of the Unfair Dismissals Act 1993.

The Tribunal is of the view that either (a) the application was initiated by a valid written application delivered to the Offices of the Rights Commissioners within the relevant time limit or (b) that this is a case where a finding of exceptional circumstances should be made so as to extend the time limit pursuant to Section 7 of the Unfair Dismissals Act 1993.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

